

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Case No. 21-cr-250 (JRT/TNL)

Plaintiff,

v.

ORDER

Jing Chen (1),
Ying Chen (2).
Li Yang (3), and
Xinhua Xiong (4),

Defendants.

This matter comes before the Court on motions for extension of time filed by Defendants Ying Chen, Li Yang, and Xinhua Xiong. ECF Nos. 148, 149, 150. This matter was previously designated complex under 18 U.S.C. § 3161(h)(7)(B)(iv). ECF No. 104.

Defendant Ying Chen seeks an additional three-day extension of the deadline for filing pretrial motions based on “the complicated and unusual issues in the pretrial motions being filed” by Defendant. ECF No. 148. Defendants Li Yang and Xinhua Xiong seek an additional 14-day extension of the deadline for filing pretrial motions. ECF Nos. 149, 150. Defendant Xinhua Xiong contends that she needs “additional time for law enforcement to respond to producing requested discovery to [Defendant Xinhua Xiong]¹ . . . [and] to

¹ Defendant Xinhua Xiong contends that she has not yet received discovery from the Government related to her Second Motion for Discovery, ECF No. 125. *See* ECF No. 149 at 1. She notes that “[t]he most recent order of the Court [was] that this added discovery be produced on or before September 6, 2022.” *Id.* The Court, however, has not yet ruled on Defendant’s Second Motion for Discovery and did not order the Government to produce the requested discovery by September 6.

review it with counsel and a Mandarin language interpreter.” ECF No. 149. Defendant Li Yang contends that a continuance is necessary for counsel to meet with her to discuss the pretrial motions prior to their filing with the assistance of a Chinese Mandarin dialect interpreter. ECF No. 150 at 1-2. The Government does not object to the motions. *See* ECF Nos. 148, 149 at 1, 150 at 2.

Additionally, beginning on March 13, 2020, and continuing thereafter, the Chief District Judge for the United States District Court for the District of Minnesota, has issued a series of General Orders in connection with the COVID-19 pandemic, addressing, among other things, criminal proceedings and trials.² On September 14, 2022, Chief Judge Patrick J. Schiltz entered General Order No. 39, which allows limited in-person proceedings for defendants who decline to consent to conducting the proceeding using videoconferencing, or telephone conferencing if videoconferencing is not reasonably available. *See generally In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 39 (D. Minn. Sept. 14, 2022). General Order No. 39 states that because only limited in-person proceedings may be held each day, criminal proceedings may be continued until the date that the criminal proceeding takes place.

General Order No. 39 continues to encourage the use of videoconferencing in criminal proceedings and states that, with the defendant’s consent, criminal proceedings will be conducted by videoconferencing, or telephone conferencing if videoconferencing is not reasonably available. General Order No. 39 further provides that the presiding judge

² All General Orders related to the COVID-19 pandemic may be found on the Court’s website at <https://www.mnd.uscourts.gov/coronavirus-covid-19-guidance>.

will enter orders in individual cases to extend deadlines and exclude time under the Speedy Trial Act to address delays attributable to COVID-19. **Accordingly, should a defendant file pretrial motions, counsel shall also file a letter indicating whether that defendant consents to a motions hearing by videoconference.** *See also, e.g.*, ECF No. 44.

Pursuant to 18 U.S.C. § 3161(h), this Court finds that the ends of justice served by granting a continuance outweigh the best interests of the public and Defendants in a speedy trial and such continuance is necessary to provide Defendants and their counsel reasonable time necessary for effective preparation and to make efficient use of the parties' resources.

The Court will grant an extension of 14 days. Because "[e]xclusions of time attributable to one defendant apply to all codefendants," *United States v. Mallett*, 751 F.3d 907, 911 (8th Cir. 2014) (quotation omitted); *see also United States v. Arrellano-Garcia*, 471 F.3d 897, 900 (8th Cir. 2006), this period of time will be excludable as to all Defendants, including Jing Chen.

Based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Defendant Ying Chen's 6th Motion for Continuance to File Pretrial Motions, ECF No. 148, is **GRANTED**.
2. Defendant Li Yang's Motion for Extension of Time to File Pretrial Motions, ECF No. 150, is **GRANTED**.
3. Xinhua Xiong's Sixth Motion for Continuance of Pretrial Motions Filing Deadline, ECF No. 149, is **GRANTED**.

4. All motions in the above-entitled case shall be filed and served consistent with Federal Rules of Criminal Procedure 12(b) and 47 on or before **October 18, 2022**. D. Minn. LR 12.1(c)(1). Two courtesy copies of all motions and responses shall be delivered directly to the chambers of Magistrate Judge Leung.

5. **Should a defendant file pretrial motions, counsel shall also file a letter on or before October 18, 2022, indicating whether that defendant consents to a motions hearing by videoconference.** *See, e.g.*, ECF No. 44.

6. Counsel shall electronically file a letter on or before **October 18, 2022**, if no motions will be filed and there is no need for hearing.

7. Except as otherwise set forth herein, all responses to motions shall be filed by **November 1, 2022**. D. Minn. LR 12.1(c)(2).

8. Except as otherwise set forth herein, any Notice of Intent to Call Witnesses shall be filed by **November 1, 2022**. D. Minn. LR. 12.1(c)(3)(A).

9. Except as otherwise set forth herein, any Responsive Notice of Intent to Call Witnesses shall be filed by **November 4, 2022**. D. Minn. LR 12.1(c)(3)(B).

10. **The motions hearing, trial, and trial-related dates will remain scheduled as set forth previously in the Court's August 23, 2022, Order.** *See* ECF No. 127.

a. A motions hearing will be held pursuant to Federal Rules of Criminal Procedure 12(c) where:

- i. The government makes timely disclosures and a defendant pleads particularized matters for which an evidentiary hearing is necessary; or

- ii. Oral argument is requested by either party in its motion, objection or response pleadings.

b. Except as otherwise set forth herein, the motions hearing, if required, shall take place before the undersigned on **November 9, 2022, at 10:00 a.m.**, in Courtroom 9W, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

D. Minn. LR 12.1(d).

c. **TRIAL:**

- i. **IF NO PRETRIAL MOTIONS ARE FILED BY A DEFENDANT, the following trial and trial-related dates are:**

All voir dire questions and jury instructions must be submitted to District Judge John R. Tunheim on or before **November 21, 2022**.

This case must commence trial on **November 28, 2022, at 9:00 a.m.** before District Judge Tunheim in **Courtroom 14E**, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, **MINNEAPOLIS**, Minnesota.

- ii. **IF PRETRIAL MOTIONS ARE FILED, the trial date, and other related dates, will be rescheduled following the ruling on pretrial motions. Counsel must contact the Courtroom Deputy for District Judge Tunheim to confirm the new trial date.**

Dated: October 5 , 2022

 s/ Tony N. Leung
TONY N. LEUNG
United States Magistrate Judge
District of Minnesota

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